

1763.

PRICE. *versus* WATKINS.

SPECIAL Verdict. The Question arose on these Words of a Will.—“*Item my Will is that after my Wife Ruth Price's Decease, or if she shall alter her Condition and marry, then in such Case I devise and bequeath unto my loving Friends I. W. and M. K. or to any one of them, in case the other should die, in Trust and for the Intent to sell and convey all that Messuage &c. to any Person or Persons that shall purchase the same, and the Money arising from the Sale of the Premises shall be divided between my Children herein after named, when they attain severally to the Age of 21 Years or be married, which shall first happen.*” *Samuel Price* one of the Children attained the Age of 21 Years and married, and afterwards died intestate and without issue, in the life Time of the Testator's Widow *Ruth Price*, who did never marry again. Then the Widow died, and after her Death the Trustees sold, and the Administratrix of *Samuel* brings this Suit for *Samuel's* proportionable part of the Money arising from the Sale of the House. And the Question was, whether this was a vested Legacy to *Samuel*, or whether it was lapsed by his dying before the Trustees had power to sell, to wit, in the life Time of the Testator's Widow.

For the Plaintiff it was urged, that Land ordered to be sold and converted into Money, was to be considered as personal Estate. That this Land was to be sold at all Events, so there was no Contingency. That both Events to make a vesting in *Samuel* had happened, to wit, attaining the Age of 21 and marrying; and that this Case was exactly similar to the Case of *King versus Wilkes*. *Talbot's Cases* 117. Besides which many other Cases were cited for the Plaintiff viz. 2 *Vern.* 536. 1 *Peer Williams* 109. 2 *Peer Williams* 320. 2 *Ab. Ca. Eq.* 548. 2 *Vent.* 347. 2 *Vern.* 758. 766. 4 *Bac. Ab.* 308. 2 *Vent.* 366. 2 *Vern.* 72. 348. 424. 2 *Ab. Ca. Eq.* 654.

For the Defendant it was said, that in Legacies to be raised out of Land, the Time of *Payment* is the Time of *vesting*. That in this Case the Land could not be considered as personal Estate, till the Trustees had power to sell it, which was not till after the Widow's Death, and that *Samuel* dying before, his Legacy was lapsed and would merge for the Benefit of the Heirs. And the Case of *Oads and Ferry* was much relied on, *Vin. Devises* 383. The other Cases cited for the Defendant were 2d *Vern.* 92. 416. 208. 2 *Peer Williams* 276. 610. 484. 3 *Peer Williams* 20.

BUT THE COURT were clearly of Opinion, that it was a *vested* Legacy, and Judgment was given for the Plaintiff.